

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Facilitating the Deployment of Text-to-911 And Other Next Generation 911 Applications)	PS Docket No. 11-153
)	
Framework For Next Generation 911 Deployment)	PS Docket No. 10-255
)	
Legal and Statutory Framework For Next Generation 911 Services)	PS Docket No. 12-333
)	

COMMENTS OF COMPTTEL

COMPTTEL, through counsel, hereby responds to the Commission’s Public Notice issued in the above-captioned proceeding requesting comment on the legal and statutory framework for Next Generation 911 services.¹ Congress passed the Next Generation 911 Advancement Act of 2012 on February 22, 2012 and instructed the Commission to work with the Secretary of Homeland Security, the Administrator of the National Highway Traffic Safety Administration and the National E911 Implementation Coordination Office (“ICO”) to prepare and submit to Congress not later than one year after enactment a report containing recommendations for the legal and statutory framework for Next Generation 911 services.

The Next Generation 911 Advancement Act contemplates the transition from voice centric legacy 911 networks to Next Generation 911 networks capable of receiving and processing communications in multiple different forms and formats including voice, real time text, video and data applications. The multimedia services that will traverse the Next

¹ FCC Public Notice, “Public Safety and Homeland Security Bureau Seeks Comment on the Legal and Statutory Framework for Next Generation 911 Services Pursuant To the Next Generation 911 Advancement Act of 2012,” DA 12-1831 (rel. Nov. 13, 2012).

Generation 911 networks use Internet Protocol (“IP”) technology as the foundation for all communications. As a result, in order to accomplish the transition, Public Safety Answering Points (“PSAPs”) must be updated and outfitted with the equipment and systems necessary to receive, process and respond to non-voice 911 communications. Equally important to a successful transition is the ability of service providers to interconnect with one another on an IP-to-IP basis so that they may offer their customers access to managed Next Generation 911 services and ensure that their customers’ emergency communications reach the appropriate PSAP in a timely manner. Therefore, the legal and statutory framework for Next Generation 911 services must have at its core the absolute right of service providers to interconnect with one another on an IP-to-IP basis.

The Commission acknowledged over a year ago in the *Connect America Fund* Report and Order, that it “has set an express goal of facilitating industry progression to all-IP networks and ensuring the transition to IP-to-IP interconnection is an important part of achieving that goal.”² Almost three years ago, the National Broadband Plan recommended that the Commission clarify the interconnection rights and obligations of service providers and encourage the transition to IP-to-IP interconnection where efficient.³ Although the Commission has made clear that the “duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network topology underlying the interconnection, whether TDM, IP, or otherwise,”⁴ it has declined as yet to identify the specific statutory provisions that should govern IP-to-IP

² *In the Matter of Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) at ¶1335.

³ National Broadband Plan at 49 (March 2010).

⁴ *Connect America Fund* Report and Order at ¶1335.

interconnection negotiations – whether Section 4, Section 201, Section 251(a), Section 251(c) or Section 706 of the Act.

The Commission’s inaction on the Broadband Plan’s recommendation to clarify the IP interconnection rights and obligations of service providers cannot help but retard progress in the transition to Next Generation 911. The National Emergency Number Association (“NENA”) describes Next Generation 911 as “a system comprised of managed IP-based networks” designed “to provide access to emergency services from all sources, and to provide multimedia data capabilities for PSAPs and other emergency service organizations.”⁵ In its NG9-1-1 Transition Plan Considerations Information Document, NENA lists the functions and responsibilities of the E9-1-1 System Service Provider, described by NENA as typically an ILEC, as providing the systems and support necessary to enable 9-1-1 calling for one or more PSAPs including “[a] method of interconnection for all telecommunications providers including but not limited to the wireline [defined as ILECs, CLECs, Cable Operators and others who provide wireline service], wireless and VoIP carriers.”⁶ The Commission’s apparent reluctance to act on the interconnection issue may actually have the effect of holding hostage the multimedia support necessary for the deployment of Next Generation 911 services.

COMPTEL and others have consistently argued that interconnection rights and obligations in the IP context are governed by Sections 251 and 252 of the Communications Act and that the regulatory backstop of arbitration before a State Commission to resolve issues on which the parties cannot agree is critical to ensure that smaller competitors that lack bargaining power are not forced to accept unfavorable terms and conditions because that is all that is

⁵ See http://www.nena.org/?page=NG911_TransPlanning

⁶ NENA, NG9-1-1 Transition Plan Considerations Information Document, NENA 77-501, Version 1, at 21 (Feb. 21, 2011).

offered. The applicability of neither Section 251 nor 252 is dependent on the technology used in the underlying networks and there is no rational basis for concluding that Section 251 and 252 interconnection rights and obligations evaporate as networks transition from TDM to IP.

The Commission can no longer afford to delay addressing the interconnection issue and just assume that Next Generation 911 networks and services will emerge independently and that customers of all providers will be able to access those networks and services despite the fact that their underlying providers are unable to interconnect with the E9-1-1 System Service Provider serving the PSAP or Emergency Services IP Network (ESInet) on just and reasonable terms and conditions. As the Commission has found, “incumbent LECs have no economic incentive . . . to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC’s network and services” and regulatory oversight is necessary in order to equalize bargaining power.⁷ The continuing validity of this finding is evidenced by comments one of the largest incumbent LECs has made to this Commission on the issue of IP interconnection.

In response to the Commission’s confirmation that all carriers have a duty to negotiate interconnection in good faith regardless of the technology used, AT&T has steadfastly maintained that the Commission has no authority to regulate interconnection between two providers of IP-based services or even to require IP-based carriers to negotiate interconnection in good faith.⁸ At the same time, AT&T has asked the Commission to preclude carriers from

⁷ *Connect American Fund Report and Order* at ¶ 1337, quoting the *Local Competition First Report and Order*, 11 FCC Rcd 15499 at ¶15528 (1996).

⁸ Comments of AT&T filed February 24, 2012 in *In the Matter of Connect America Fund*, WC Docket No. 10-90, *et al.*, at 36-50; Reply Comments of AT&T filed March 30, 2012 in *In the Matter of Connect America Fund*, WC Docket No. 10-90, *et al.*, at 25-29.

demanding interconnection in TDM format wherever it decides to replace legacy circuit switched telephony with VoIP.⁹ AT&T's attempt to get the Commission to exercise its regulatory jurisdiction to remove the rights of carriers to interconnect with AT&T's circuit switched network while arguing that the Commission has no jurisdiction to require good faith negotiations or regulate interconnection with its IP network does not bode well for the chances of competitive carriers to obtain acceptable, much less just and reasonable, interconnection terms and conditions. In order to ensure that the customers of those competitive carriers will continue to have access to the next generation PSAPs and ESInets served by AT&T, the Commission needs to heed the advice of its Technological Advisory Council and "resolve the fundamental question around the applicability of Section 251" to IP-to-IP interconnection arrangements.¹⁰

Four years ago, Congress directed ICO to develop "a national plan for migrating to a national IP-enabled emergency network capable of receiving and responding to all citizen-activated emergency communications and improving information sharing among emergency response entities."¹¹ The ICO recommended that state and federal regulatory bodies review current laws and regulations to foster the migration to IP-enabled 911 services, including those relating to technology and interconnection.¹² The Commission has had more than sufficient time and opportunity to clarify the rights and responsibilities of service providers to interconnect with one another on an IP-to-IP basis to facilitate the migration to a national IP-enabled

⁹ *In the Matter of AT&T Petition To Launch a Proceeding Concerning The TDM-to-IP Transition* filed November 7, 2012 at 6, 21.

¹⁰ September 24, 2012 Meeting of the Technological Advisory Council, Meeting Presentation at 27, available at <http://www.fcc.gov/encyclopedia/technological-advisory-council>.

¹¹ The National E9-1-1 Implementation Coordination Office, "A National Plan For Migrating to IP-enabled 9-1-1 Systems" at 1-1 (Sept. 2009).

¹² *Id.* at 5-10 – 5-11.

emergency network. AT&T's resistance to being saddled with any obligation to interconnect with other carriers on an IP-to-IP basis , or even to negotiate such interconnection in good faith, will not foster or facilitate the development of an IP-enabled emergency network capable of receiving and responding to all citizen activated emergency communications.

For the foregoing reasons and those stated by the National Broadband Plan, the Technological Advisory Council and ICO, the Commission must clarify the interconnection rights of IP-based service providers. At the very least, the Commission must confirm that all carriers have an absolute statutory right to interconnect with one another on an IP-to-IP basis pursuant to Section 251 and 252 of the Act.

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Respectfully submitted,

/s/

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